



Brian Schweitzer
Governor

MONTANA PUBLIC DEFENDER COMMISSION

Richard E. "Fritz" Gillespie
Chair

AGENCY RESPONSE TO THE 2008 AMERICAN UNIVERSITY RECOMMENDATIONS

(Related recommendations are grouped together)

Recommendation #1: *Information should describe caseloads, dispositional processes, attorney workload, and related data that describes the Agency's operations.*

Recommendation #2: *Adjust case weighting system.*

Recommendation #6: *Commission must request comprehensive and reliable reports.*

Recommendation #15: *Develop a plan to deal with case overloads.*

- Revised Case Weighting System developed and in place.
- Standard Operating and Financial information Reports in place.
- New standard Case Disposition Form in place.
- Case management system training program
 - Purpose is to assure that data input will be consistent, accurate, and timely.
 - Information certification process developed and in place.

Recommendation #3: *A meaningful system should be developed for evaluating the work of the lawyers.*

Recommendation #11: *An evaluation procedure for lawyers needs to be developed which is timely, is based primarily on objective data, and promotes the lawyer's professional development over the next year.*

Recommendation #12: *Special procedures should be developed for evaluating contract lawyers, relying primarily on the information provided in the periodically filed fee petitions and the proposed closing documents.*

- A new evaluation form for FTE attorneys was developed and presented to the Personnel Committee on 12/20/10.
- An evaluation process was developed for both Chief Public Defender and Chief Appellate Defender in 2010 by the Public Defender Commission and the Human Resources manager.
- The Contracts Manager has an evaluation procedure for contract attorneys in process.
- Each FTE attorney has received a performance evaluation at the regional level.
- All Regional Deputy Public Defenders and regional managing attorneys have been evaluated.
- Appellate defenders have been evaluated.
- The Chief Public Defender and the Chief Appellate Defender have been evaluated by the Public Defender Commission.

Recommendation #4: *Budget submission should show accomplishments of attorneys*

- Reports to the Legislature now include case openings and closings and case durations.
- Members of the Commission have proposed contacting UM School of Journalism to do a film on the agency's mission and to show accomplishments.

Recommendation #5: *Reduce/eliminate minimum caseloads for managing attorneys.*

- Public Defender Commission adopted Policy 114—Management Caseload Limitations.
 - Caseload of the Chief Public Defender was reduced to a maximum of 300 hours per year
 - Caseloads of Regional Deputy Public Defenders were reduced:
 - Maximum of 600 hours per year for largest caseload regions (1,2, and 9)
 - Maximums ranging from 1000 hours for mid-load regions to 1400 hours per year in smaller regions

Recommendation #7: *Separate Conflict Office reporting to the Commission*

- OPD Human Resources Director developed a job profile for a conflict coordinator.
- The Commission approved the hiring of a conflict coordinator to report directly to the Commission.
- Personnel Committee reviewed and approved the job posting on 12/20/10.

Recommendation #8: *Training Officer should regularly survey staff and contract attorneys to determine training needs*

Recommendation #9: *Each training program should have systematic feedback and evaluations from attendees*

- Both recommendations are included as part of the Training Officer's ongoing duties and are documented.

Recommendation #10: *Trial notebooks for each category of cases; orientation program; initial skills program; brief bank; video recordings of trainings; and newsletter*

- Development of trial notebooks for each region and category is ongoing
- An orientation program and initial skills training modules for new attorneys are in place.
- Brief banks are in development for both the Office of the Public Defender and Office of the Appellate Defender.
- Training programs are recorded on video and are available to new attorneys .
- A newsletter is produced on a quarterly basis.

Recommendation #13: *Prohibit a contract attorney from taking a fee case that was originally an assigned case.*

- A proposal to amend Section IV. 2. F. of the Standards is under consideration by the Commission.
- That proposed amended will prohibit contract counsel from taking any fee from a client for a case assigned by the OPD.

Recommendation #14: *Emergency attorney on call 24/7.*

- This recommendation was tabled by the Public Defender Commission until funding is available.
- The Public Defender Commission is evaluating methods for providing attorneys in rural locations on an emergency basis.

Recommendation #16: *When caseloads are at a maximum level, OPD refuses cases.*

- Revised Case Weighting System developed and in place
- Case management system training program
- Purpose is to assure that data input will be consistent, accurate, and timely.
- Information certification process developed and in place.
- Contract attorneys are available to relieve caseloads.

Recommendation #17: *Budget should include contractor rate increase, pay increase for FTE, and reduced caseloads for managers.*

- Caseloads have been reduced for managers.
- Increased rates and pay have been requested for contractors and FTEs in the fiscal 2012-2013 budget request.

Recommendation #18: *Establish a separate fund for emergency cases.*

- The agency establishes a separate budget during the annual budgeting process to accommodate emergencies.

Recommendation #19: *Chief should communicate with staff regularly regarding policies, procedures, evaluations, compensation.*

- The Chief writes a column for the quarterly newsletter which discusses policies, procedures, and other issues where necessary.
- The Chief meets regularly with Regional Deputy Public Defenders to discuss policies and other issues.
- The Chief provides regular email updates when necessary.

Recommendation #20: *Explain why different resource distributions among regions*

- The Public Defender Commission has directed the Chief Public Defender to provide budget proposals to the Regional Deputy Public Defenders for their review.
- Deputy Regional Public Defenders are encouraged to challenge budget issues where they believe they are under-resourced.

Recommendation #21: *Remove fear of retaliation for noting agency problems*

- The Public Defender Commission has established liaisons for all employee groups; those liaisons are encouraged to report any problems to the Commission and are invited to participate in Commission meetings.
- Grievance procedures are in place for all employee groups through the American Federation of State, County, and Municipal Employees (AFSCME).
- A letter was sent to each employee in 2010 setting out the state and federal policy against retaliation, as well as describing the available remedies. It was signed by every manager in the agency, all of whom fully endorsed those policies.
- Members of the Public Defender Commission have endorsed those policies.

Recommendation #22: *Staff must be accountable to implement Standards, Policies and Procedures*

- Policy 136, Standards Compliance, has been adopted.
- The new orientation program provides essential information pertaining to policies, procedures and standards.

Recommendation #23: *Commission must be assertive in demanding information from staff. (See #1 and #6)*

- The commission has identified the information which they want reported routinely and appropriate operational reports have been developed.
- Case management system training program
- Purpose is to assure that data input will be consistent, accurate, and timely.
- Information certification process developed and in place.

Recommendation #24: *Commission to challenge staff to promote new options*

- The Office of the Public Defender developed Policy 180 to encourage new ideas.
- The Public Defender Commission has established liaisons for all employee groups; those liaisons are encouraged to report any problems to the Commission and are invited to participate in Commission meetings.

Recommendation #25: *Commission should select a secretary that reports to them.*

- The Public Defender Commission has tabled this recommendation until funding is available.

Recommendation #26: *Commission should insist on definite lines of authority.*

- Organizational charts for both the state and individual regions were updated in June of 2010.
- The Chief Public Defender has appointed the Training Director to serve as chief in the Chief's absence.

Recommendation #27: *Commission to impose limitations on private practice lawyers in system*

- The agency has adopted policy 120 on Outside Employment.

Recommendation #28: *Commission require a strategic plan for all regions.*

- Regional offices are required to submit quarterly field reports to set out their specific strategic plans for service delivery in their regions.
- Regional reports are reviewed by the Chief and the Commission Chair, and a summary is prepared for the entire commission on a regular basis.

Recommendation #29: *Commission evaluate statutory provision.*

- The Commission directed the agency to help develop House Bill 97 to remove the Office of the Appellate Defender from the supervision of the Chief Public Defender.
- The Commission has been working to develop alternate strategies for recovery of fees.

Recommendation #30: *Commission and staff advocate value of agency to others.*

- The Public Defender Commission has gone on record as encouraging Commissioners and senior staff to speak with civic and professional groups whenever possible.
- The chief is on the Board of Crime Control and the Council for Courts of Limited Jurisdiction.

Recommendation #31: Investigator resources provided to misdemeanor cases.

- Policy 121, Staff Investigators, has been implemented to prioritize resources.
- Investigator resources are provided in all cases when needed.

Recommendation #32: All lawyers should have authority to use automated legal research engines

- The agency has purchased additional Lexis research licenses for use by contract attorneys.
- All contract attorneys who do a substantial amount of work for the agency are entitled to a license at OPD expense.
- All FTE are provided with a license.

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